IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. A.O.G., D.O.B.: 11/19/93 Appellant.	)	No. 63898-0-I DIVISION ONE UNPUBLISHED OPINION FILED: May 3, 2010

Spearman, J.--A juvenile court found 15-year-old A.G. guilty of child molestation in the first degree of his eight-year-old cousin, J.T. On appeal, A.G. contends that there is insufficient evidence that the sexual contact was for the purpose of sexual gratification. Viewing the evidence in the light most favorable to the State, there is sufficient evidence to support the juvenile court's findings and conclusion that A.G. committed child molestation in the first degree. We also conclude that A.G. failed to carry his burden of proving that he was prejudiced by the court's delay in entering written findings of fact and conclusions of law. We affirm.

FACTS

In March 2008, J.T. told her foster mother that her cousin A.G. had

touched her private area. J.T.'s foster mother made a report to child protective services. Before being placed with this foster family, J.T. had been living with her aunt and uncle, her grandmother, her cousin A.G., and three other cousins.

The State charged A.G. with three counts of child molestation in the first degree. At the time of adjudication, J.T. was eight years old and A.G. was 15 years old.

At adjudication, J.T. testified that she did not like A.G. and said, "He hurt me." J.T. said that A.G. "did s-e-x on me." She testified that this took place in his room. J.T. testified that she was playing a video game in A.G.'s room and that they were lying on the floor next to each other. J.T. said that A.G. hurt her "private part" by touching it with his hands. She drew a picture of where A.G. touched her, which was admitted as an exhibit. J.T. also described her "private parts" as "where I go pee." J.T. said that A.G. pulled off her pants and her underwear before touching her. J.T. testified that this happened "every day after school." J.T. said that she told A.G. to stop.

J.T. said that she told her grandma, her foster mother, and her case worker that A.G. hurt her. J.T. testified that she told her grandma that A.G. was "having s-e-x with me." J.T. said her grandma told her the next time he does it to scream for help.

A.G.'s grandmother, Irma Bartlett, testified that J.T. told her that A.G. was a "pervert." Bartlett asked J.T. whether she knew what a pervert was and J.T. said no. Bartlett told J.T. to scream if anyone touched her in a way that she did

not like, and someone in the house would hear her. Bartlett asked A.G. whether he had done anything and A.G. said no.

The juvenile court found A.G. guilty of one count of child molestation in the first degree. The court made a number of oral findings. Although J.T. "gave various accounts as to how many times the sexual touching occurred," the court found J.T.'s "testimony consistent and credible that [A.G.] had touched her on at least one occasion." The court found that the touching was for the purpose of sexual motivation based on "the circumstances and facts it happened in the bedroom as described by the victim." The court did not find A.G. guilty of the other counts of child molestation in the first degree because J.T. was asked leading questions in subsequent interviews, which "contaminat[ed] her memory." The court later denied A.G.'s motion to reconsider.

A.G. appeals.

DISCUSSION

Sufficiency of the Evidence

A.G. asserts there was insufficient evidence for the court to find him guilty of child molestation in the first degree because there is insufficient evidence that the sexual contact was for the purpose of sexual gratification.

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Walton, 64 Wn. App. 410, 415, 824 P.2d 533 (1992). We view all evidence in the light most favorable to the State to determine whether "any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt." State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). We defer to the trier of fact to resolve conflicting testimony, evaluate the credibility of witnesses, and generally weigh the persuasiveness of the evidence. Walton, 64 Wn. App. at 415-16. Circumstantial evidence is as reliable as direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In reviewing a juvenile court adjudication, we decide whether substantial evidence supports the findings of fact and whether the findings support the conclusions of law. State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth." State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). "We consider unchallenged findings of fact verities on appeal, and we review conclusions of law de novo." Id. at 193.

The only element at issue in the charged crime of child molestation in the first degree is whether the sexual contact was for the purpose of sexual gratification. Under RCW 9A.44.083(1), "[a] person is guilty of child molestation in the first degree when the person has . . . sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim." RCW 9A.44.010(2) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party." "Sexual gratification" is not an essential element of child molestation in

the first degree; rather, it clarifies the meaning of "sexual contact" to exclude inadvertent touching or contact from being a crime. State v. Lorenz, 152 Wn.2d 22, 34, 93 P.3d 133 (2004). The juvenile court is entitled to make reasonable inferences about whether sexual contact is for the purpose of sexual gratification based on all the evidence and testimony. State v. T.E.H., 91 Wn. App. 908, 916-17, 960 P.2d 441 (1998).

A.G.'s primary argument is that because the court did not find J.T. credible, there is no evidence that the sexual contact was for the purposes of sexual gratification. A.G. relies on the court's statement in its oral findings, "I put no faith in [J.T.]'s statements and all the differences in the allegations . . . ." The court was describing how, after multiple interviews, J.T. was inconsistent in the number of times that A.G. touched her and how he touched her. After making that statement, however, the court said, "But I do find beyond a reasonable doubt that there was one occasion in the Ferndale house where she was touched by [A.G.] with his hand."

A.G. also asserts that there is insufficient evidence to support the finding in the court's order denying A.G.'s motion for reconsideration that J.T.'s "pants and underwear were removed when the sexual contact occurred, indicating more than a transitory touching." A.G. cites the court's statement, "I cannot say it was outside of clothing or inside of clothing." "An oral opinion 'has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.'" State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) (quoting

State v. Mallory, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1996)). At adjudication, J.T. testified that A.G. pulled off her pants and her underwear before touching her. Viewing this evidence in the light most favorable to the State, there is sufficient evidence to support the court's finding that J.T.'s pants and underwear were removed when the sexual contact occurred.

A.G. also challenges the court's finding, "The testimony of Irma Bartlett and [J.T.] were both credible." We defer to the trier of fact to evaluate the credibility of witnesses. Walton, 64 Wn. App. at 415-16. A.G. asserts that this finding contradicts the court's oral finding that J.T. was not credible. But the court did find J.T. credible as to the fact that A.G. touched her on at least one occasion.

Here, there was sufficient evidence to support the juvenile court's finding that the sexual contact was for the purpose of sexual gratification. At adjudication, J.T. said that A.G. "did s-e-x on me" and that this took place in his room. J.T. testified that A.G. hurt her "private part" by touching it with his hands. She drew a picture of where A.G. touched her, which was admitted as an exhibit. J.T. said that she told her grandmother, her foster mother, and her case worker that A.G. hurt her. J.T.'s grandmother, foster mother, and case worker all testified at adjudication and corroborated J.T.'s testimony that she told them about A.G.'s actions. This evidence demonstrates that the touching was not inadvertent and is sufficient to support the juvenile court's conclusion that A.G. was guilty of child molestation in the first degree.

Findings of Fact and Conclusions of Law

In his opening brief, A.G. asserts that we should remand because the juvenile court failed to enter written findings of fact and conclusions of law. Under JuCR 7.11(d), the court shall enter written findings and conclusions in a case that is appealed. The prosecutor is required to submit the findings and conclusions within 21 days after receiving the notice of appeal. Id. The defendant has the burden of proving that late filing resulted in prejudice and we will not infer prejudice from delay in entry of written findings of fact and conclusions of law. Head, 136 Wn.2d at 625.

The juvenile court entered written findings of fact and conclusions of law on January 13, 2010, before A.G. submitted his reply brief. A.G. acknowledged the written findings in his reply brief and did not make any arguments that the delay in written findings of fact and conclusions of law resulted in prejudice. Accordingly, he has failed to carry his burden that he was prejudiced by the court's delay in entering written findings of fact and conclusions of law.

We affirm.

Spearman, J.

WE CONCUR:

Appelwick, J.

Ellington, J.